

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF PUERTO RICO

In the Matter Of:

ELIAS LOPEZ RODRIGUEZ

Debtor

Case No. 05-01832 (SEK)

Chapter 13

MOTION TO DISMISS

TO THE HONORABLE COURT:

COMES NOW secured creditor POPULAR FINANCE, represented by the undersigned attorney, and to this Honorable Court very respectfully states and prays:

1. On March 2, 2005, debtor herein filed a bankruptcy petition under Chapter 13 of Title 11 of the United States Code. His proposed plan dated February 21, 2005 was confirmed on May 12, 2005. See docket no. 9.

2. Popular Finance is a secured creditor of the above-named debtor pursuant to 11 U.S.C. §101(10) and, therefore, a party in interest in the instant proceeding.

3. On April 25, 2001, for value received, debtor and Popular Finance duly executed a promissory note in the amount of \$39,100.00. To guarantee debtor's obligation under said note, debtor subscribed a mortgage upon debtor's place of residence located at Urbanización La Rosaleda in the Municipality of Vega Alta. Popular Finance is the holder in due course of the above described note.

4. Debtor's confirmed plan dated February 21, 2005 provides, in the pertinent part, for Popular Finance's pre-petition arrears in the amount of \$7,303.11 to be paid through the plan and for debtor to maintain direct payments to appearing creditor.

5. However, debtor has defaulted in the terms and conditions of his confirmed plan. After reviewing the Chapter 13 home page, it appears that debtor is **\$1,218.00 in arrears** with payments to the Trustee. See enclosed copy of ledger.

6. Title 11 U.S.C. §1307 provides in pertinent part that:

[O]n request of a party in interest or the United States trustee and after notice and a hearing, the **court (...) may dismiss a case** under this chapter, whichever is in the best interest of creditors and the estate, **for cause**, including--- **material default by the debtor with respect to a term of a confirmed plan.**

(Emphasis ours).

7. Popular Finance respectfully submits that debtor's inability to continue regular payments to the Chapter 13 Trustee constitutes a serious feasibility issue, a violation of the terms and conditions of debtor's confirmed plan, and just cause for dismissal pursuant to Section 1307 of the Bankruptcy Code.

WHEREFORE, POPULAR FINANCE very respectfully requests from this Honorable Court to enter an order dismissing this case for debtor's failure to comply with the regular payments to the Chapter 13 Trustee and enter any other order it may deem just and proper.

UNLESS A PARTY IN INTEREST FILES AN OBJECTION WITHIN
THIRTY (30) DAYS FROM THE DATE OF THIS NOTICE, THE CASE

MAY BE DISMISSED WITHOUT THE NEED OF FURTHER NOTICE OR
HEARING PURSUANT TO GENERAL ORDER 05-09.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that this document has been electronically filed today and will be electronically notified using the CM/ECF System to **Debtor's attorney**, Juan O. Calderon Lithgow Esq., and **Chapter 13 Trustee**, José R. Carrión Esq., and other parties in interests of record. Also, this document will be notified by regular mail to **Debtor**, Elías López Rodríguez, La Rosaleda B-33 Calle 2, Vega Alta, PR 00692.

RESPECTFULLY SUBMITTED.

In San Juan, Puerto Rico this 12th day of May, 2006.

S/ ROSAMAR GARCIA-FONTAN
U.S.D.C. 221004
Attorney for Popular Finance
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FOR THE DISTRICT OF PUERTO RICO

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Chapter 13

AFFIDAVIT FOR DEFAULT JUDGMENT PURSUANT TO SECTION 201 (B) (4)
OF THE SERVICE MEMEBERS CIVIL RELIEF ACT OF 2003

I, **Rosamar García Fontán**, Attorney for the Consumer Bankruptcy Department of Banco Popular de Puerto Rico, declare under penalty of perjury the following:

That according to the enclosed certification, provided by the Department of Defense Manpower Data Center (DMDC), debtor is not in active duty or under call to active duty as a member of the Army, Navy or Air Force of the United States of America; the National Guard; the Public Health Service or the National Oceanic and Atmospheric Administration.

In San Juan, Puerto Rico, this 12th day of May, 2006.

S/ ROSAMAR GARCIA FONTAN

Department of Defense Manpower Data Center

MAY-12-2006 13:46:26



Military Status Report
Pursuant to the Servicemembers Civil Relief Act

Last Name	First/Middle	Begin Date	Active Duty Status	Service/Agency
LOPEZ	ELIAS	Based on the information you have furnished, the DMDC does not possess any information indicating that the individual is currently on active duty.		

Upon searching the information data banks of the Department of Defense Manpower Data Center, based on the information that you provided, the above is the current status of the individual as to all branches of the Military.

A handwritten signature in dark ink, reading "Robert J. Brandewie", is positioned above the printed name and title.

Robert J. Brandewie, Director
Department of Defense - Manpower Data Center
1600 Wilson Blvd., Suite 400
Arlington, VA 22209-2593

The Defense Manpower Data Center (DMDC) is an organization of the Department of Defense that maintains the Defense Enrollment and Eligibility Reporting System (DEERS) database which is the official source of data on eligibility for military medical care and other eligibility systems.

The Department of Defense strongly supports the enforcement of the Servicemembers Civil Relief Act [50 USCS Appx. §§ 501 et seq] (SCRA) (formerly the Soldiers' and Sailors' Civil Relief Act of 1940). DMDC has issued hundreds of thousands of "does not possess any information indicating that the individual is currently on active duty" responses, and has experienced a small error rate. In the event the individual referenced above, or any family member, friend, or representative asserts in any manner that the individual is on active duty, or is otherwise entitled to the protections of the SCRA, you are strongly encouraged to obtain further verification of the person's active duty status by contacting that person's Military Service via the "defenseink.mil" URL provided below. If you have evidence the person is on active-duty and you fail to obtain this additional Military Service verification, provisions of the SCRA may be invoked against you.

If you obtain further information about the person (e.g., an SSN, improved accuracy of DOB, a middle name), you can submit your request again at this Web site and we will provide a new certificate for that query.

This response reflects current active duty status only. For historical information, please contact the Military Service SCRA points-of-contact.

See: <http://www.defenselink.mil/faq/pis/PC09SLDR.html>

WARNING: This certificate was provided based on a name and Social Security number (SSN) provided by the requester. Providing an erroneous name or SSN will cause an erroneous certificate to be provided.

Report ID: **WQHJJDGUCX**

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05-01832 SEK	ELIAS LOPEZ RODRIGUEZ (xxx-xx-0389)	LA ROSALEDA • B 33 CALLE 2 • VEGA ALTA • PR • 00692	\$203.00 MO	Bar Date(s):	7/20/2005 (has passed) 8/29/2005 (has passed)
				Confirmed:	5/12/2005
	Trustee: José R. Carrión	Attorney: JUAN O CALDERON LITHGOW*		Case Status:	ACTIVE

Debtor Pay Schedules

Start Date	Number Periods	Amount	How Often	Who's Paying	Order Date	Action
4/1/2005	60.00	\$203.00	MONTHLY	ELIAS LOPEZ RODRIGUEZ	7/2/2005	
4/1/2010	end of plan	\$0.00	MONTHLY	ELIAS LOPEZ RODRIGUEZ	7/2/2005	

Forgive Information

Date	Amount	Description
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Payments Expected for Step 1:

Period	Start Date	End Date	Payment Amount Expected	Total
1	4/1/2005	4/30/2005	\$203.00	\$203.00
2	5/1/2005	5/31/2005	\$203.00	\$406.00
3	6/1/2005	6/30/2005	\$203.00	\$609.00
4	7/1/2005	7/31/2005	\$203.00	\$812.00
5	8/1/2005	8/31/2005	\$203.00	\$1,015.00
6	9/1/2005	9/30/2005	\$203.00	\$1,218.00
7	10/1/2005	10/31/2005	\$203.00	\$1,421.00
8	11/1/2005	11/30/2005	\$203.00	\$1,624.00
9	12/1/2005	12/31/2005	\$203.00	\$1,827.00
10	1/1/2006	1/31/2006	\$203.00	\$2,030.00
11	2/1/2006	2/28/2006	\$203.00	\$2,233.00
12	3/1/2006	3/31/2006	\$203.00	\$2,436.00
13	4/1/2006	4/30/2006	\$203.00	\$2,639.00
14	5/1/2006	5/31/2006	\$203.00	\$2,842.00
15	6/1/2006	6/30/2006	\$203.00	\$3,045.00
16	7/1/2006	7/31/2006	\$203.00	\$3,248.00
17	8/1/2006	8/31/2006	\$203.00	\$3,451.00
18	9/1/2006	9/30/2006	\$203.00	\$3,654.00
19	10/1/2006	10/31/2006	\$203.00	\$3,857.00
20	11/1/2006	11/30/2006	\$203.00	\$4,060.00
21	12/1/2006	12/31/2006	\$203.00	\$4,263.00
22	1/1/2007	1/31/2007	\$203.00	\$4,466.00
23	2/1/2007	2/28/2007	\$203.00	\$4,669.00
24	3/1/2007	3/31/2007	\$203.00	\$4,872.00
25	4/1/2007	4/30/2007	\$203.00	\$5,075.00
26	5/1/2007	5/31/2007	\$203.00	\$5,278.00
27	6/1/2007	6/30/2007	\$203.00	\$5,481.00
28	7/1/2007	7/31/2007	\$203.00	\$5,684.00
29	8/1/2007	8/31/2007	\$203.00	\$5,887.00
30	9/1/2007	9/30/2007	\$203.00	\$6,090.00
31	10/1/2007	10/31/2007	\$203.00	\$6,293.00
32	11/1/2007	11/30/2007	\$203.00	\$6,496.00
33	12/1/2007	12/31/2007	\$203.00	\$6,699.00
34	1/1/2008	1/31/2008	\$203.00	\$6,902.00
35	2/1/2008	2/29/2008	\$203.00	\$7,105.00
36	3/1/2008	3/31/2008	\$203.00	\$7,308.00
37	4/1/2008	4/30/2008	\$203.00	\$7,511.00
Total				\$7,714.00

 Payments Expected for Step 2:

Period	Start Date	End Date	Payment Amount Expected	Total
1	4/1/2010	4/30/2010	\$0.00	\$0.00
Total				\$0.00

 Breakdown for Combined Schedules

Period	Date (Month/Year)	Payment Due	Payment Received	Forgive Amount	Amount Due
1	4/2005	\$203.00	\$203.00		\$0.00
2	5/2005	\$203.00	\$203.00		\$0.00
3	6/2005	\$203.00			\$203.00
4	7/2005	\$203.00	\$203.00		\$203.00
5	8/2005	\$203.00	\$203.00		\$203.00
6	9/2005	\$203.00	\$203.00		\$203.00
7	10/2005	\$203.00			\$406.00
8	11/2005	\$203.00	\$203.00		\$406.00
9	12/2005	\$203.00	\$406.00		\$203.00
10	1/2006	\$203.00			\$406.00
11	2/2006	\$203.00			\$609.00
12	3/2006	\$203.00			\$812.00
13	4/2006	\$203.00			\$1,015.00
14	5/2006	\$203.00			\$1,218.00

Total Delinquent Amount: \$1,218.00



